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## **POSITION ON PROPOSED LEGISLATION**

**BILL:** HB 303 Public Safety - Persistent Aerial Surveillance

**FROM:** Maryland Office of the Public Defender

**POSITION:** Informational

**DATE:** 01/26/24

The Maryland Office of the Public Defender (MOPD) strongly believes that persistent surveillance is an overly broad invasive tool that acts as a general warrant capturing data on broad swaths of individuals. The U.S. Court of Appeals for the Fourth Circuit seems to agree. See [Leaders of a Beautiful Struggle v. The Baltimore Police Department, 2 F.4th 330 \(4th Cir. 2022\)](#) (on en banc review, holding that an aerial surveillance program that enables police to deduce from the whole of individuals' movements is a search such that accessing its data requires a warrant). While we believe that persistent surveillance should never be authorized, a bill restricting its use is needed to the extent that it will be employed.

While House Bill 303 seeks to address the immediate concerns of persistent aerial surveillance, a broader approach is needed to ensure we are addressing the variety of existing and emerging invasive technologies used by law enforcement. In recent years, surreptitious surveillance techniques of varying levels of invasiveness and effectiveness are increasingly used throughout the State. Despite this growing field, there continues to be a lack of transparency surrounding the use of the surveillance techniques by law enforcement. More disturbingly, when relied upon to arrest and prosecute individuals, there are incomplete or opaque disclosures surrounding their usage.

MOPD encourages the Judiciary Committee to go further than the provisions in H.B. 303 and contemplate a holistic approach to regulate these various technologies rather than address them individually in a piecemeal fashion. Such an approach would ensure that, when these technologies are implemented, it is done in a transparent, constitutional, and scientifically reliable manner.

**Submitted by: Maryland Office of the Public Defender, Government Relations Division.**